

JOURNAL OF THE ASSEMBLY [January 1, 1979]

STATE OF WISCONSIN

# Assembly Journal

Eighty-Third Regular Session

MONDAY, January 1, 1979.

The chief clerk makes the following entries under the above date:

The following full or partial vetoes failed to pass pursuant to **Assembly Joint Resolution 12**: Assembly Bills 149, 349, 544, 884, 1004 and 1019. Assembly Joint Resolution 111 also failed pursuant to **Assembly Joint Resolution 12**.

---

## ADMINISTRATIVE RULES

Read and referred:

### **Administrative Rule 3**

Relating to requiring the Bingo Control Board to promulgate proposed administrative rules BGO. 3.07, 3.08, 3.09 and 6.01.

Submitted by Department of Regulation and Licensing.

To committee on State Affairs.

---

## COMMUNICATIONS

December 12, 1978

The Honorable Edward G. Jackamonis  
Speaker of the Assembly  
Room 211 West, State Capitol  
Madison, Wisconsin 53702

Dear Ed:

I am writing to request that you accept my resignation from the Minnesota-Wisconsin Boundary Area Legislative Advisory Committee.

I thank you for the honor of appointing me to serve on this body, but I think it would be in everyone's best interest if you would appoint someone who is geographically closer and who has an avid interest in the aims of this committee.

JOURNAL OF THE ASSEMBLY [January 1, 1979]

Thank you.

Sincerely,  
THOMAS B. MURRAY  
State Representative

---

State of Wisconsin  
Department of State  
Madison

To Whom It May Concern:

Dear Sir: Acts, joint resolutions and resolutions, deposited in this office, have been numbered and published as follows:

Bill, Jt. Res. or Res.	Chapter No.	Publication date
Assembly Bill 1, ss -----	450-----	December 21, 1978
Assembly Bill 2, ss -----	451-----	December 21, 1978
Assembly Jt Res 1 -----	Enrolled 47 -----	Not Published
Assembly Jt Res 2 -----	Enrolled 48 -----	Not Published

DOUGLAS LaFOLLETTE  
Secretary of State

---

Notice of Intent received from Historic Preservation Division, Wisconsin State Historical Society, to apply for Federal Assistance for Title I National Historic Preservation Act of 1966.

Comments due by January 3, 1979.

To committee on State Affairs.

Notice of Intent received from Wisconsin State Historical Society to apply for Federal Assistance for Survey and Planning for Historic Preservation Annual Nonconstruction Program Grant for FY '79.

Comments due by January 3, 1979.

To committee on State Affairs.

Notice of Intent received from U.S. Veterans Administration to install new CT Scanner at Middleton Veterans Administration Hospital in Madison, Wisconsin.

Comments due by January 10, 1979.

To committee on Health and Social Services.

JOURNAL OF THE ASSEMBLY [January 1, 1979]

OPINION OF THE ATTORNEY GENERAL

OAG 98-78

December 29, 1978

The Honorable Everett E. Bolle  
Assembly Chief Clerk  
220 West, State Capitol  
Madison, Wisconsin 53702

Dear Mr. Bolle:

The Assembly Committee on Organization has asked a series of questions relating to the authority of a common school district to lease property that it owns.

A problem exists in some school districts where there are many empty classrooms due to the declining enrollments. In some instances, the school district does not wish to sell buildings or property because they may again be needed in the future for school purposes. The empty classrooms or school buildings are a current financial drain on the school districts involved.

It is my opinion that common school districts probably have the authority to lease property not currently needed for school purposes if authorized by the annual meeting pursuant to sec. 120.10(12), Stats., which provides that the annual meeting of a common school district may "[a]uthorize the sale of any property belonging to and not needed by the school district."

Since the lease of property is a limited sale, in the sense that it is a conveyance of property limited either in terms of duration, territorial extent or rights conveyed, I am of the opinion that the authority to sell probably includes the authority to lease.

In *Bell and Another v. The City of Platteville*, 71 Wis. 139, 36 N.W. 831 (1888), where the common council of the city was given "the management and control of the finances and of all property of the city" and the power to "receive, purchase, and hold for the use of the city any estate, real or personal, to sell and convey the same," but no specific grant of authority to lease property, the court held that the city was authorized to lease property not needed for a public purpose.

Public school districts have been held to be quasi-municipal corporations. See *Iverson v. Union Free High School Dist.*, 186 Wis. 342, 202 N.W. 788 (1925), and *Schaut v. Joint School District*, 191 Wis. 104, 210 N.W. 270 (1926). Since school districts are quasi-municipal corporations it is my opinion that if the matter were

JOURNAL OF THE ASSEMBLY [January 1, 1979]

litigated, our Wisconsin Supreme Court would apply *Bell v. the City of Platteville* and rule that a common school district has the authority to lease property under its general authority to own and sell property.

But this conclusion is not free from doubt. While a lease may properly be considered to be a limited sale of real estate and thus within the power to sell, there are aspects of a lease that are not present in a full sale of real estate, such as a continuing contractual relationship and the potential for further negotiation or the possibility of a dispute. Additionally, I cannot forecast with certainty that our supreme court would apply *Bell v. The City of Platteville* to a quasi-municipal corporation.

These considerations lead me to recommend to the Legislature that it remove the question from doubt.

Your specific questions and my answers are:

1. Whether a school board may lease that portion of a building not needed for school purposes;
2. Whether a school board may lease an entire building not needed for school purposes;
3. Whether the school board may lease to a private non-profit making public purpose organization;
4. Whether a school board may lease to a private profit making business organization;

Following the stated reasoning but with the caveat that the conclusion is not free from doubt, the answer to these questions is yes if the lease is authorized by the annual meeting pursuant to sec. 120.10(12), Stats.

5. Whether a school board must lease on a bidding or priority based procedure;
6. Whether a school board may lease the property at a rental rate sufficient to provide a profit for the school district; and
7. Whether a school board may lease the property at a rental rate sufficient only to defray maintenance and depreciation costs to the district.

Section 120.12, Stats., gives to the school board of a common school district broad powers with respect to running the school

JOURNAL OF THE ASSEMBLY [January 1, 1979]

district and managing its property and affairs. Nevertheless, as the supreme court held in *Iverson, supra* at 354:

The powers conferred upon school districts, whether to be exercised by the electors in their district meetings or by the school board, are powers germane to and appropriate for the promotion of the cause of education, and they must be used and exercised for the purpose of accomplishing rather than defeating that object ....

Thus, assuming that it has the power to lease, the school board would have discretion in the manner of how it leased property but the school board must act responsibly to the end that it must carry out its trust. It should obtain the most favorable terms it deems reasonable and if there is a profit from the lease of property, the profit must be used for school purposes. It is for the school board to determine whether it can obtain the best terms on a negotiated deal or by putting the matter out on bids.

The opinion request also asks that I discuss what terms must be included in the lease agreement.

The specific terms of the agreement are to be determined by the school board, or if negotiated, as determined by the school board and the lessee. It is impossible in a general opinion as is the case here to specify what terms should be in such a lease, but it should certainly contain the standard provisions that protect lessors and their property. Additionally, school districts may wish to consider language that would permit them to terminate leases upon appropriate notice if it becomes apparent that the leased premises are again needed for school purposes. Specific situations will suggest provisions in the lease agreement.

Sincerely yours,  
BRONSON C. La FOLLETTE  
Attorney General

**CAPTION:**

Common school districts have the authority to lease property that they own if such property is not currently needed for school purposes and if the lease is authorized by the annual meeting of the common school district. The answer is not free from doubt and it is recommended that the Legislature specifically grant to school boards, if authorized by the annual meeting, the authority to lease school property not currently needed for school purposes.

**ERRATA AND ADDENDA**

On page 938, in the authors to **Assembly Bill 756**, change "Lewis" to "Coggs".

On page 3239, in the authors to assembly amendment 20 to assembly substitute amendment 2 to **Assembly Bill 874**, change "Snyder" to "Shabaz".

On page 3384, the authors to assembly amendment 19 to **Assembly Bill 1220** should read "Representatives Litscher, Fischer, Barry, Thompson, Shabaz, Day, Hasenohrl, Everson, Kincaid, Brist, Hauke, Lewison, Lewis, Bradley and McEssy".